

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARGARITA GONZALEZ,)
)
 Charging Party,) Case No. LA-CO-734
)
 v.) PERB Decision No. 1212
)
 CALIFORNIA SCHOOL EMPLOYEES) June 24, 1997
 ASSOCIATION, CHAPTER 413,)
)
 Respondent.)
 _____)

Appearance: Margarita Gonzalez, on her own behalf.
Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Margarita Gonzalez (Gonzalez) of a Board agent's dismissal (attached) of her unfair practice charge. In her charge, Gonzalez alleged that the California School Employees Association, Chapter 413 denied her the right to fair representation guaranteed by the Educational Employment Relations Act (EERA) section 3544.9 and thereby violated section 3543.6(b).¹

¹**EERA** is codified at Government Code section 3540 et seq. Section 3543.6 states, in pertinent part:

It shall be unlawful for an employee organization to:

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

The Board has reviewed the entire record in this case including Gonzalez' original and amended unfair practice charge, the Board agent's warning and dismissal letters, and Gonzalez' appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and hereby adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CO-734 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.

Section 3544.9 states:

The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit..

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



April 8, 1997

Margarita Gonzalez

Re: Margarita Gonzalez v. California School Employees
Association. Chapter 413
Unfair Practice Charge No. LA-CO-734
Dismissal and Refusal to Issue a Complaint

Dear Ms. Gonzalez:

In the above-referenced charge you allege the California School Employees Association (CSEA) violated its duty of fair representation. On March 28, 1997, I issued a warning letter. On April 2, 1997, you filed your first amended charge. The first amended charge indicates your telephone number is (790)744-7348. On April 2, 1997, I telephoned you at the (790) telephone number which was not in service according to the recorded message. I then called you at the (619) telephone number listed on your original charge. I was able to contact you on April 3, 1997, and explained the amended charge did not correct the deficiencies noted in the warning letter. My investigation revealed the following information.

Your first amended charge states in its entirety:

In respond to your Warning Letter on 3-28-97
My concern is about: willful wanton inaction
of employee organization. (CSEA) The
following are provided to clarify, by use of
examples, the unjustify actions to refuse to
represent employee when I stay eligible for
representation but rather excessively and
made to suffer cruel and unusual punishment
to the extent contributed greatly ensue to
file this complaint on my own forward my
complaint. I am objecting to the use of
dishonest tactic in which (union) has
systematically frustrated the normal,
uniform, out of the ordinary/common/regular
process by "regressive" bargaining. This
social discourse between affected employee
and labor representative. One (1) (union)
not encourage dialogue between employee and
employer two (2) misconstrued as a callous
total disregard for and potential liability
three (3) unexpected interruptions of

LA-CO-734
Dismissal
April 9, 1997
Page 2

productive effort on the part of representative. I, Margarita Gonzalez, as the charging party, who have been deeply hurt by the offending party- CSEA/Chapter 413 less than 7 months time, [sic]

On May 28, 1996, the San Marcos Unified School District hired you as a probationary employee. You worked as a noon-time supervisor and a group leader. On July 29, 1996, Dennis Stokes, Director of Human Resources & Development, notified you by letter that your employment with the District had been terminated.

On or about August 6, 1996, you contacted CSEA. On or about August 7, 1996, you met CSEA Labor Representative, Jeanne Foster. You indicated to Foster that you believed the District actions were motivated by your union activities and/or your race. Foster gave you the telephone numbers for EEOC, DFEH, agreed to contact the District, and indicated she would get back to you. On August 7, 1996, Foster met with Stokes who indicated you may be receiving additional days of pay if a review of your timesheets indicated as such. Stokes also provided your application for union membership dated July 29, 1996, to Foster. Foster contacted you regarding the additional pay, discussed with you the difference between resigning and termination. You did not inform Foster of your decision at that time.

On August 8, 1996, you submitted your resignation to the District. On August 9, 1996, Foster left a message or spoke with you, and indicated the District was not accepting your resignation because you were a probationary employee. Foster also indicated you would receive a paycheck on August 31, 1996, if the District determined it owed you money based on hours worked prior to your termination. Foster also told you she could not do anything more for you.

On November 24, 1996, you sent a fax to Foster. On December 3, 1996, Foster responded to your fax by telephone and reiterated that she considered your case closed.

You have alleged that the exclusive representative denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Association's conduct was arbitrary, discriminatory or in bad

LA-CO-734
Dismissal
April 9, 1997
Page 3

faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations.]

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

"... must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (Emphasis added.)" [Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

The charge does not present facts demonstrating CSEA acted in an arbitrary, discriminatory, or bad faith manner. Although you have provided facts indicating you spoke with CSEA Labor Representative, Foster, you have not provided facts demonstrating a prima facie case. The first amended charge indicated CSEA refused to represent you, but failed to provide facts demonstrating in what manner CSEA violated its duty of fair representation. The facts indicate Foster met with you immediately after you contacted CSEA, provided you with information regarding your allegations of racial discrimination, and met with the District representatives regarding possible monies owed to you. Foster also contacted you with additional information on August 9, 1996, and responded to your November 24, 1996 fax on December 3, 1996. The charge does not factually demonstrate CSEA violated its duty of fair representation. Thus your charge must be dismissed.

LA-CO-734
Dismissal
April 9, 1997
Page 4

Right to Appeal.

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number. To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Attention: Appeals Assistant
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed.

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, sec. 32132.)

LA-CO-734
Dismissal
April 9, 1997
Page 5

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

Tammy L. Samsel
Regional Director

Attachment

cc: Madalyn J. Frazzini

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



March 28, 1997

Margarita Gonzalez

Re: Margarita Gonzalez v. California School Employees
Association. Chapter 413
Unfair Practice Charge No. LA-CO-734
Warning Letter

Dear Ms. Gonzalez:

In the above-referenced charge you allege the California School Employees Association (CSEA) violated its duty of fair representation. Your charge indicates messages may be left for you at the following telephone number (619)744-7348. I tried to contact you on March 17, 1996, March 27, 1997, and March 28, 1997. However, the telephone number indicated does not seem to be connected to an answering service or machine. Thus, my investigation has been limited to the allegation presented in your charge.

Your charge states in its entirety:

I declare the following . . . Jeanne M. Foster arbitrarily ignored the threatened nature or dangerous description of the termination letter, which constitute an imminent danger for the protection of the health, safety or welfare of the affected employee. (Margarita Gonzalez, self). In other words, Labor Relations Representative, pretreatment of case value convey the idea clearly would not be promoting the employee right to ensure adequate communication between employer and employee, including the right to be free of discrimination. The federal interpretive guidelines defines dignity to mean that employer interaction with employee affirm the rights (which assist the employee to maintain and enhance employee self-worth). Union inconsistent with this activities, i.e. poor performance to provide direct reporting when necessity arose to make recommendations for revision to the appropriate department where applicable. Her instructions is offered with malice and

LA-CO-734
Warning Letter
March 28, 1997
Page 2

selfish motives to the mutual advantage of
the employer and its employee, [sic]

EERA § 3541.5(a) (1) provides the Public Employment Relations Board shall not, "issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." It is your burden, as the charging party to demonstrate the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB Decision No. 1024.) You filed this charge on March 17, 1997. However, the charge does not include any reference to dates. Thus, I cannot determine whether this charge is timely filed or outside the jurisdiction of PERB.

PERB Regulation 32615(5) requires, unfair practice charges include "a clear and concise statement of the facts and conduct alleged to constitute an unfair practice."¹ A charging party should allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S.) The charge as presently written does not provide facts indicating how CSEA violated its duty of fair representation.

You have alleged that the exclusive representative denied you the right to fair representation guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Association's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

Absent bad faith, discrimination, or
arbitrary conduct, mere negligence or poor
judgment in handling a grievance does not
constitute a breach of the union's duty.
[Citations.]

A union may exercise its discretion to
determine how far to pursue a grievance in

¹PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

LA-CO-734
Warning Letter
March 28, 1997
Page 3

the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

"... must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (Emphasis added.)" [Reed District Teachers Association. CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

The charge does not present facts demonstrating CSEA acted in an arbitrary, discriminatory, or bad faith manner.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before April 4, 1997, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3008.

Sincerely,

Tammy L. Samsel
Regional Director